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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/358,280	07/21/1999	STEVEN M. UTTER	MISTY-52064	1354
7590 Rosenbaum & Associates, P.C. 650 Dundee Road, Suite #380 Northbrook, IL 60062			EXAMINER KIM, CHRISTOPHER S	
			ART UNIT 3752	PAPER NUMBER

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/26/2006	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/358,280	UTTER, STEVEN M.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Christopher S. Kim	3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 5, 8, 18, 19, 21, 23, 24 and 26-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5, 8, 18, 19, 21, 23, 24 and 26-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 May 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed October 10, 2006 is acknowledged.
2. It is noted that the amended claims show underline of text which as added in the amendment filed on April 28, 2006, e.g. in claim 5, "an attachment strap..."; in claim 18, "an attachment for securing..."; and in claim 24, "a seal member carried by..." Future amendments that do not accurately reflect changes to the claims will be held non-responsive.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Priority***

4. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 and/or 121 as follows:

The later-filed application must be an application for a patent for an invention which is also disclosed in the prior application (the parent or original nonprovisional application or provisional application); the disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994).

Claims 5, 8, 18, 19, 21, 23, 24 and 26-28 have not been granted the benefit of the earlier filing date.

### ***Drawings***

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "one-way valve" recited in claims 5, 18 and 24 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

6. Claim 27 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 27 recites the limitation "means for pressurizing" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 27 recites the limitation "means for pressurizing" in line 2. It appears to be a double inclusion of the "seal member...reciprocating member...handle...one-way valve" recited in claim 24 lines 4-8.

***Claim Rejections - 35 USC § 103***

7. Claims 5, 8, 18, 19, 21, 23, 24, 26, 27 and 28 (as best understood) are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (2,853,212) in view of Norman (842,689).

Anderson discloses an apparatus comprising:

a generally cylindrical pressurizable container 10 having an end cap 16;

a pump apparatus 13 comprising a cylindrical housing 14 having a one-way valve 35 and a seal member 18 carried by a reciprocating member 15, and a handle 32;

a water conduit 34 having a restrictive valve (inherent in order to build up the pressure in container 10 and shown by Norman at reference character 8);

a spray nozzle (column 3, lines 42); and

a means for sealing 29.

Anderson does not disclose an attachment strap (and arguably a restrictive valve).

Norman discloses an attachment strap 20 and restrictive valve 8. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the valve of Norman to the device of Anderson to enable buildup of pressure and to control the release of water/solution. Additionally, it would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the attachment strap of Norman to the device of Anderson to carry the device.

Regarding claim 28, Anderson in view of Norman discloses the limitations of the claimed invention with the exception of the ice and water. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided ice and water to the device of Anderson in view of Norman to spray ice water.

8. Claims 18, 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cushing (4,911,339) in view of Anderson (2,853,212).

Cushing discloses an apparatus comprising: a pressurizable container 16; a manual pump 40; a means for delivering fluid (spray nozzle) 20; a means for controlling the emission of evaporative mist (valve) 46; an attachment 26; a means for hands-free directing (clip) 24.

Cushing does not disclose a "seal member ...reciprocating member...handle...one-way valve." Anderson discloses a pump apparatus 13

comprising a cylindrical housing 14 having a one-way valve 35 and a seal member 18 carried by a reciprocating member 15, and a handle 32;

It would have been obvious to a person having ordinary skill in the art at the time of the invention to have replaced the bellows pump of Cushing with the piston pump of Anderson to provide a more effective pump as suggested by Anderson starting on column 1, line 27 through column 2, line 21.

9. Claims 5, 8, 23, 24, and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cushing (4,911,339) in view of Anderson (2,853,212) and Shurnick et al. (4,852,781).

Cushing discloses an apparatus comprising: a pressurizable container 16; a pump 40 for pressurizing the container; a water conduit 18, 51, 72 (a first conduit 72; a second conduit 18, 51); a spray nozzle 20.

Cushing does not disclose a "seal member ...reciprocating member...handle...one-way valve." Anderson discloses a pump apparatus 13 comprising a cylindrical housing 14 having a one-way valve 35 and a seal member 18 carried by a reciprocating member 15, and a handle 32;

It would have been obvious to a person having ordinary skill in the art at the time of the invention to have replaced the bellows pump of Cushing with the piston pump of Anderson to provide a more effective pump as suggested by Anderson starting on column 1, line 27 through column 2, line 21.

Cushing does not disclose an attachment strap. Shurnick et al. discloses a means 27 for securing a bottle to a part of a person's body (waist shown in figure 1). It

would have been obvious to a person having ordinary skill in the art at the time of the invention to have replaced cage 26 of Cushing with the means 27 of Shurnick et al. to attach the device of Cushing to a runner.

Regarding claim 28, Cushing in view of Anderson and Shurnick discloses the limitations of the claimed invention with the exception of the ice and water. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided ice and water to the device of Cushing in view of Anderson and Shurnick to spray ice water.

### ***Response to Arguments***

10. Applicant's arguments filed October 10, 2006 have been fully considered but they are not persuasive.

The drawing objection for not showing reference characters in the drawing filed on May 24, 2006 is withdrawn.

Applicant argues that specification and what is shown as reference 117 on figure 2 is sufficient for enablement. This is not persuasive. The issue is not one of enablement. The drawings must show every feature of the invention specified in the claims as required by 37 CFR 1.83(a).

Applicant states that "means for pressurizing" has been deleted from claim 27. The claim amendment does not appear to incorporate this change.

Applicant argues that "misting apparatus for cooling a local area" must be given patentable weight because it limits the structure of the claimed invention. It is arguable



that the term “misting” be given consideration to limiting the claim but the recitation of intended use, “for cooling a local area,” does not provide any structural limitation to the claim. The prior art discloses “spraying” a liquid. Therefore, the limitation of “misting apparatus” is met. Additionally, evaporative cooling which inherently occurs when liquid is sprayed also meets the intended use language of the claim.

Applicant argues that Cushing delivers a stream of liquid toward the rider’s mouth (column 5, lines 28-30, 33) rather than a means for delivering fluid as a continuous evaporative mist. This is not persuasive. See Cushing, column 1, lines 5-10, “the present invention relates to a hand pressurized water pump and **sprayer**...” Emphasis added.

Applicant argues that Anderson’s flange 18 does not “seal” as seal member 18 does. Applicant’s argument is not understood. Is applicant arguing that Anderson’s flange 18 does not “seal” or that it does not “seal” as applicant’s seal member 18? Applicant’s seal member 18 (O-ring) cannot be the “seal member carried by the reciprocating member” because applicant’s O-ring 18 is not carried by the reciprocating member 121, 122. Second, the flange 18 of Anderson seals the pump piston between protrusions 26 and 27. Otherwise, Anderson cannot develop pump pressure.

In response to applicant’s argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in

the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation can be found in the references themselves and/or in the knowledge generally available to one of ordinary skill in the art as explicitly provided for in the rejection paragraphs above. Applicant may disagree with the motivation explicitly identified by the examiner, but it is uncertain how applicant can dismiss the identified motivation and assert that none exists.

### ***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

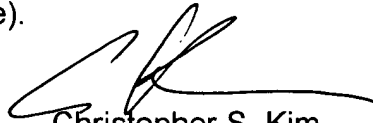
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. Kim whose telephone number is (571)

Art Unit: 3752

272-4905. The examiner can normally be reached on Monday - Thursday, 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher S. Kim  
Primary Examiner  
Art Unit 3752

CK